

CRIMINAL APPEAL NO. 603 OF 1987

Date of Decision:10.7.95.

THE HONOURABLE MR. JUSTICE B.C.PATEL

AND

THE HONOURABLE MR. JUSTICE K.R.VYAS

1. Whether Reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of judgment ?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judge ?

Karsanbhai Hirabhai Tadavi.....Appellant

Versus

State of Gujarat.....Respondent

Mr.H.M.Chinoy, Advocate (Amicus Curiae) for the appellant.

Mr. J.A.Shelat, Addl.PP for

CORAM:B.C.PATEL & K.R.VYAS,JJ

10TH JULY,1995

ORAL JUDGMENT: (PER: K.R.VYAS,J)

The present appeal arises out of the judgment and order dated 23rd July, 1987 passed by the learned Additional Sessions Judge, Bharuch, Camp at Rajpipla in Sessions Case No.78/86 convicting the appellant for the offence of causing murder of Ganpat Jetha by inflicting an axe blow on his head, punishable under section 302 of the Indian Penal Code and sentencing him to suffer R.I. for life.

It is the case of the prosecution that the marriage of the brother's sister of the deceased Ganpat was arranged on 6-5-86 and as the appellant was a headstrong person; had given knife blow to one Ramesh Dahya on the last Holi festival, he was expelled from the community and, therefore, was not invited by the deceased for the dinner in the marriage. It appears that there were some exchange of words between the deceased and the appellant on this count prior to the incident. On 5-5-86 at about 2.30 a.m. when the deceased was

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In the Maholla there was an electric pole with the electric light on. The appellant came with an axe and inflicted a blow on the head of the deceased. She cried for help and therefore the appellant ran away leaving the axe already pierced in the head of the deceased. On hearing the shouts, her son Vikram and his wife Savita came. She thereafter had gone to inform Vithalbhai who came with her at the scene of offence. Nothing is taken out in her cross-examination and she has remained consistent in her version deposed in her examination-in-chief. There is, therefore, no reason for us to discard her testimony. She is the wife of the deceased and her presence at the scene of offence was obvious. She was sitting outside her house just by the side of the cot on which her husband was sleeping and her grand son was answering natural call. The said fact is also found in the Panchnama of the scene of

Bai Ramila (PW 4) in her evidence has stated that the axe was lying pierced in the head of her husband while Vithalbai in his evidence has stated that he saw the axe pierced in the head whereas it is not so stated in the complaint. Vikram (PW 5) in his evidence has stated that the axe was lying below the cot of his father. Now this discrepancy in the versions of these witnesses about the lying of the axe is too trifling a thing which does not affect the oral testimony of the witnesses. As far as the broad facts of the incident are concerned, the evidence of the witnesses corroborates each other. In any case, this is not a circumstance which would totally destroy the prosecution case.

fter due deliberations with other ten to fifteen persons and, therefore, the story put forward by the prosecution is not believable. We are not impressed by this submission for the simple reason that the incident happened at about 2.30 a.m. and it was but natural that the prosecution witnesses would try to stay with the members of the deceased as

2.30 a.m. being odd hours one would not like to rush to the police station and instead would prefer to wait till the morning. This is particularly with reference to the Adivasi community the prosecution witnesses belong to. Furthermore, Vavdi Outpost is situated at a distance of about 3 kilometers from the scene of offence. These persons had no vehicle. Therefore, the conduct of the complainant in lodging the complaint immediately in the morning is but natural. We are, therefore, of the opinion that there was no delay on the part of the complainant in lodging the complaint. The ft

marriage of the brother's daughter of the deceased was arranged on 6-5-86, many persons might have fathered and, therefore, if the issue was discussed with them and there was talk regarding the incident with those persons, it cannot be called a deliberation on the part of the prosecution witnesses before lodging the complaint. As stated above, the entire case rests on the sole testimony of Bai Ramila and her evidence is truthful, natural and suffers from no infirmity. We are, therefore, of the opinion that the learned Additional Sessions Judge was perfectly justified in placing reliance on her evidence and convicting the appellant.

Since we are in total agreement with the reasoning of the learned Additional Sessions Judge, and as we do not find any merit in this appeal, it fails and is dismissed.

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MR.JUSTICE B.C.PATEL